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SUBJECT: TRIAL OF SHANNON WAR PROTESTERS COLLAPSES FOR SECOND TIME

1. The jury hearing the case of the "Fab 5" was discharged November 7 after legal argument over whether a perception of bias could be made against the judge. Earlier in the trial, the judge had ruled that "legal excuse" would not be acceptable as a defense. He thereby eliminated the defense's best argument. Subsequently, the defense claimed that events Judge Donagh McDonagh had attended in the U.S. could give the impression of bias. Specifically, the defense cited a conference in Texas in the 1990's in which the judge and other attendees were photographed with then Governor Bush. Defense also cited the judge's attendance at President Bush's inauguration in 2000 and invitation to attend the 2004 inauguration. The defense said these events could give the appearance of bias, given that the Fab 5 attacked the plane to protest U.S. policy. The judge said he would not give a detailed analysis of his social history in open court, but after a private meeting with the counsel, he dismissed the jury. The Director of Public Prosecutions must now decide whether to bring the case to trial for a third time.

2. This is the second time a jury was dismissed in this case. The first trial was abandoned when Judge Frank O'Donnell withdrew it from the jury on the sixth day of the trial. Yesterday was the 10th day of the second trial at Dublin Circuit Criminal Court.

3. Below is the text of the article that appeared in the November 8 edition of the Irish Times.

BEGIN TEXT

The second trial of five anti-war protesters accused of damaging a US aircraft at Shannon airport has collapsed after defence lawyers suggested the judge had been invited to both of George W Bush's presidential inaugurations and attended the first one in 2000.

The first trial was also abandoned when Judge Frank O'Donnell withdrew it from the jury on the sixth day of the trial. Yesterday was the 10th day of the second trial at Dublin Circuit Criminal Court.

In the absence of the jury defence counsel asked Judge Donagh McDonagh to confirm whether he had, as a barrister in the mid-1990s, attended a conference in Texas which involved a photo call with the then governor, George W Bush.

Counsel also suggested that Judge McDonagh was invited to both of Mr Bush's presidential inaugurations and attended the first one in 2000. Michael O'Higgins SC suggested that the 2004 invitation was "extended by Mr Tom DeLay, who has had recent difficulties".

Roderick O'Hanlon SC told Judge McDonagh that matters had been brought to the attention of the defence team which could lead it to ask the judge to disqualify himself from handling the trial as they touched on issues relevant to the trial.

Brendan Nix SC said it was not a question of "actual" bias but the "perception of bias".

Mr O'Higgins said the defence was not attempting to argue that any decision made by Judge McDonagh had been affected by the information.

He said the trial process should "be seen to be untainted" and the "purity of the system must be to the fore. The personality of George W Bush is part of this trial whether one likes it or not," he added.

Judge McDonagh said that he would not "give detailed analysis" of his social history in open court and said that counsel could speak to him in the privacy of chambers. Judge McDonagh then rose for around 15 minutes before returning to withdraw the case from the jury. The judge said that matters had arisen in its absence and he had "no option" but to withdraw the case from it.

The five accused, who have pleaded not guilty to two counts each of causing damage without lawful excuse to a naval aircraft, property of the US, have been remanded on continuing bail until this Friday, when the case will be mentioned in court.

Judge McDonagh did not respond to questions from The Irish Times last night about whether he was invited to, or had attended, the inaugurations.

END TEXT

13. Embassy officials are attempting to get further information from the GOI and will be reported septel.

KENNY